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No. 93-754

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

CHRISSY F., By Her Next Friend And Guardian Ad Litem, DONNA MEDLEY,
Petitioner,

v.

SEBE DALE, JR., Individually and as Chancellor for the Tenth Chancery Court District of Mississippi, GARLAND UPTON, Individually and as Referee of the Marion County Youth Court, PHILLIP BROADHEAD and FRED COOPER,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Was the Court of Appeals consistent with well-established precedent in dismising the Defendants claim due to lack of subject matter jurisdiction?

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BRIEF IN OPPOSITION

INTRODUCTION

Respondents State of Mississippi, et al., respectfully request that this Court deny the petition for a writ of certiorari, seeking review of the opinion of the United States Court of Appeals for the Fifth Circuit. That opinion is reported at 995 F.2d 595 (5th Cir. 1993). The Court of Appeals properly dismissed two Defendants because it did not have jurisdiction to grant injunctive relief.

STATUTES INVOLVED

28 U.S.C. § 1257 State courts; certiorari

> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or treaties or statutes of, or any commission held or authority exercised under, the United States.
>
> (b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

STATEMENT OF THE CASE

A carefully detailed statement of the facts leading up to this litigation can be found in the district court's memorandum opinion and order in *Chrissy F. By Medley v. Mississippi Department of Public Welfare et al.*, 780 F. Supp. 1104 (S.D. Miss. 1991). The Fifth Circuit adopted these facts in *Chrissy F. By Medley v. MS. Dept. of Public Welfare, et al.*, 995 F.2d 595 (5th Cir. 1993). A brief outline of the procedural history of this case follows.

On July 8, 1988, Donna Medley, a California resident, filed a Complaint in the United States District Court for the Southern District of Mississippi on behalf of Chrissy F., a Mississippi minor, alleging that the Defendants had violated Chrissy F.'s substantive and procedural due process rights. The complaint alleged violations of federal statutory rights as well as pendent state claims. The Complaint requested that declaratory judgment be

granted against defendants Mississippi Department of Public Welfare (MDPW); Thomas H. Brittain, Commissioner of MDPW; Mississippi Attorney General Mike Moore; Sebe Dale, Jr., Chancellor of the Tenth Chancery Court District of Mississippi; Richard Douglass, District Attorney for the Fifteenth Circuit Court District; Sharon Whitt, Supervisor of the Marion County Welfare Department; Jeanette Werbly, Supervisor of the Hancock County Welfare Department; Angela Lacy, a caseworker with the Marion County Welfare Department; Dr. Franklin D. Jones; Dr. S. Kimball Love; Timothy Charles Foxworth, father of Chrissy F.; and Does 1-25, alleging that these defendants had violated the minor's right not to be deprived of state and federally created benefits of life, liberty and pursuit of happiness, rights of freedom from harm in violation of the Fourteenth Amendment, 42 U.S.C. § 5103, *et seq.*, and an order allegedly issued by the Juvenile Court of the San Francisco Superior Court of California.

At its heart the Complaint sought to have the United States District Court set aside the custody rulings of Chancellor Dale and award custody of Chrissy F. to the San Francisco Department of Social Services (SFDSS) or to place her in a neutral and stable setting, with no maternal or paternal relatives, in cooperation with the National Children's Advisory Center in Huntsville, Alabama. In addition, the Complaint sought an order requiring all defendants to pay for a comprehensive physical, psychological and psychiatric evaluation of Chrissy F., and to force them to file a petition in the Youth Court of Hancock County, Mississippi, on behalf of the minor, to immediately investigate and pursue reports of sexual and psychological abuse. It requested the District Court to order:

> (1) Any investigation to include in-depth recorded interviews of all professionals and relatives who had known Chrissy F. since 1984;

(2) Regular visitation with her brothers, maternal great-grandmother, and others, as arranged by the SFDSS or by the Huntsville Center;

(3) The permanent appointment of Donna Medley as guardian *ad litem* and the retention of the Legal Services for Children, Inc., by Sheila Brogna, as counsel, with arranged confidential meetings and admittance *pro hoc vice* to represent Chrissy in all Youth Court proceedings;

(4) The recusal of Chancellor Dale and Marion County Youth Court Referee Garland Upton from any and all future proceedings relating to Chrissy F.; and

(5) Fred Cooper, Phillip Broadhead, Dr. Love, Dr. Jones, and District Attorney Douglass not to be parties to, actively involved in, or work to prepare any subsequent state proceedings concerning Chrissy.

Additionally, the Complaint sought Fifty Thousand Dollars ($50,000) in compensatory damages and One Hundred Thousand Dollars ($100,000) in punitive damages against defendants Brittain, Douglass, Whitt, Werbley, Lacy, Foxworth, Cooper, Broadhead, Jones, Love and Does 1-25, jointly and severally.

The state defendants filed a Motion to Dismiss pursuant to F.R.C.P. 12 (b)(1), or in the alternative, Motion to Dismiss pursuant to F.R.C.P. 12 (b)(6). On August 26, 1988, the United States District Court granted the F.R.C.P. 12(b)(1) motion, finding that the Complaint was "inextricably intertwined" with the state court judgment. The United States Court of Appeals for the Fifth Circuit reversed that ruling and directed the District Court to appoint a guardian ad litem or "next friend" for Chrissy or enter a finding that Chrissy's interests in these proceedings were adequately protected without such an appointment. ***Chrissy F. v. MS. Dept of Public Welfare, et al.***, 883 F.2d 25 (5th Cir. 1989).

The District Court conducted an evidentiary hearing and appointed Ms. Medley as guardian for Chrissy F. Dr. Franklin Jones, Dr. Kimble Love and Attorney General Mike Moore were dismissed as defendants by agreement with the plaintiff.

The remaining parties conducted extensive discovery and depositions. The Defendants filed various motions to dismiss and or for summary judgment on the grounds of Eleventh Amendment immunity, qualified immunity, absolute judicial immunity and absolute prosecutorial immunity.

On April 27, 1990 the Defendants' Motions were granted in part and denied in part by the district court: the State and all individual Defendants were immune from damages in their official capacities, the Guardian ad Litem had absolute immunity, the District Attorney did not have absolute immunity, and the other state officials were not conclusively entitled to qualified immunity. The Fifth Circuit affirmed this holding of the District Court in all respects. *Chrissy F. By Medley v. MS. Department of Public Welfare, et al.*, 925 F.2d 844 (5th Cir. 1991).

On June 10, 1991 the District Court held a trial on the merits. On December 6, 1991, the District Court issued a sixty-four (64) page Memorandum Opinion and Order. The opinion dismissed all remaining claims against all Defendants except Chancellor Dale and Youth Court Referee Upton. The Court found Cooper and Broadhead (the Guardian Ad Litems) and Foxworth (Chrissy F.'s father) were not acting under color of state law, because 42 U.S.C. § 1983 only authorizes a court to grant relief when a party's federally protected rights have been violated by a person acting under color of state law, these Defendants were dismissed. Foxworth was dismissed as a Defendant because he was not acting under color of law. The Court further found: the Plaintiff failed to establish a deprivation of a liberty interest

in personal safety within the purview of the due process clause by Defendants Dale, Douglas and Brittain; Plaintiff's right of access to the courts was not violated by Dale or the Marion County Welfare Department or the Hancock County Welfare Department via the failure to transfer the proceeding from chancery to youth court upon making of the initial allegation of abuse by Singley in a custody hearing; the plaintiff failed to establish a claim of deprivation of right of access to the courts based on Defendants' failure to act on Defendants' affirmative action except for two instances: 1) Judge Dale interfered with Chrissy's right to have her interests adjudicated in a court of competent jurisdiction by continuing to act in light of the relinquishment of Chancery jurisdiction and ordering examinations of Chrissy which served as the basis for a change in her legal and custodial status or, in the alternative, that even if Judge Dale did retain some form of jurisdiction which enabled him to issue the custody orders which were forthcoming, he still deprived Chrissy of her right of access to the court in that her guardian ad litems were not informed of nor present at the hearing and that no record was made of this proceeding from which an adequate appeal could have been made. 2) Defendant Upton violated Chrissy's right of access to the Courts with a proceeding which lacked substance and deprived Chrissy F. of representation.

The District Court ordered that Defendant Upton, in his capacity as Referee of the Marion County Youth Court, be enjoined to conduct a new youth court proceeding for the benefit of Chrissy F. regarding the allegations of sexual abuse. Dale and Upton appealed the district court decision and Medley cross appealed as to all other Defendants. On July 7, 1993 in *Chrissy F. By Medley v. MS. Department of Public Welfare, et al.*, 995 F.2d 595 (5th Cir. 1993), the Fifth Circuit held that the District Court had no jurisdiction to grant injunctive relief and otherwise affirmed as to the other five defendants.

REASONS WHY THE PETITION SHOULD BE DENIED

THE COURT OF APPEALS' JUDGMENT DISMISSING THE DEFENDANTS DUE TO LACK OF SUBJECT MATTER JURISDICTION IS CORRECT AND WAS CONSISTENT WITH WELL-ESTABLISHED PRECEDENT.

Petitioner argues that the U.S. Supreme Court should hear this case because there is a conflict among the courts of appeal as to the application and scope of the Rooker-Feldman Doctrine. The Respondents respectfully disagree.

The *Rooker-Feldman Doctrine* finds its origin in 28 U.S.C. § 1257. As the commentary following the statute points out, this "section governs the routing of cases from the highest state courts to the U.S. Supreme Court." 28 U.S.C. § 1257 states:

> 28 USC § 1257 State courts; certiorari
>
> (a) Final judgments of decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or treaties or statutes of, or any commission held or authority exercised under, the United States.
>
> (b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

The *Rooker-Feldman Doctrine* stands for the proposition that 28 U.S.C. § 1257 bars direct review in the lower federal courts of a decision reached by the highest state court because such authority is vested solely in the United States Supreme Court. *District of Columbia Court*

of Appeals v. Feldman, 460 U.S. 462, 75 L.Ed.2d 206, 103 S.Ct. 1303 (1983); *Atlantic Coast Line R. Co. v. Locomotive Engineers*, 398 U.S. 281, 296, 26 L.Ed.2d 234, 90 S.Ct. 1739 (1970); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-416, 68 L.Ed.2d 362, 44 S.Ct. 149 (1923).

In *Chrissy F. By Medley v. MS. Department of Public Welfare, et al.*, 995 F.2d 595 (5th Cir. 1993), the Court of Appeals for the Fifth Circuit held that the Federal District Court did not have jurisdiction to grant injunctive relief. The Court held:

> The record in this case reveals that the plaintiff's suit is 'patently an attempt to collaterally attack the validity of [the state court judgment].' *Almon v. Sandlin*, 603 F.2d 503, 506 (5th Cir. 1979). As the district court originally believed, this suit, insofar as it seeks a new adjudication of Chrissy's alleged abuse and custody, is 'inextricably intertwined' with the state court's rulings against the appellants. *Feldman*, 460 U.S. at 483 n.16.

Chrissy F. By Medley v. MS. Department of Public Welfare, et al., 995 F.2d 595 (5th Cir. 1993), citing *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 75 L.Ed.2d 206, 103 S.Ct. 1303 (1983).

The federal district court, as a court of limited original jurisdiction, has no authority to entertain a plaintiff's collateral attack upon state court orders or decrees. The Fifth Circuit Court of Appeals stated in *Carbonell v. La. Dept. of Health and Human Services*, 772 F.2d 185, 188 (1985):

> The district court lacks jurisdiction to conduct that exercise. As we held in *Kimball v. The Florida Bar*, 632 F.2d 1283, 1284 (5th Cir. 1980):
>
> > Stripped to its essentials, Kimball's petition for declaratory and injunctive relief asks the federal district court to reverse a final, definitive

> state court order. As we stated in *Lampkin-Asam v. Supreme Court of Florida,* 601 F.2d 760 (5th Cir. 1979): "This Court has held on numerous occasions that federal district courts do not have jurisdiction under 42 U.S.C. § 1983 or any other theory to reverse or modify the judgments of state courts." We echo that it "is axiomatic that a federal district court, as a court of original jurisdiction, lacks appellate jurisdiction to review, modify, or nullify a final order of a state court. 28 U.S.C. § 1257(3)." *Id.* The proper forum for the relief Kimball now seeks was the United States Supreme Court.

It is hornbook law that § 1983 does not create a federal cause of action but, rather, a remedy for the vindication of other federal statutory or constitutional rights. That those rights have been adjudicated in a state court under concurrent § 1983 jurisdiction or under a state cause of action is of no moment: once a determination has been made by a state court relative to the existence or nonexistence of a federal right, and any possible infringement of that right, the only avenue of review is to the United States Supreme Court via 28 U.S.C. § 1257(3). As a panel of this court observed:

> A federal district court, as a court of limited original jurisdiction, lacks power to review, modify or nullify a final order of a state court. Nor can a party, aggrieved by a judicial decision of a state's highest court, invest a lower federal court with such jurisdiction by clothing his or her grievance in the garb of § 1983 and alleging that the decision of the state court deprived him or her of constitutionally protected rights or interests . . . A party seeking relief from such an allegedly unconstitutional action by a state court may seek review in only one federal court—the United States Supreme Court.

Dasher v. Supreme Court of Texas, 650 F.2d 711, 714-15 (5th Cir. 1981), rev'd on other grounds,

658 F.2d 1045 (5th Cir. 1981) (on reh'g), reh'g opinion disapproved, *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 482 n.16 (1983). *See also, Brown v. Chastain,* 416 F.2d 1012 (5th Cir. 1969); *Gresham Park Community Organization v. Howell,* 652 F.2d 1227 (5th Cir. 1981).

The Respondents respectfully maintain that the Fifth Circuit Court of Appeals properly ruled that the Federal District Court lacked subject matter jurisdiction to entertain the Plaintiff's complaint in this action because the only relief granted by the District Court was reversal of state court decisions and remand of the case for a new trial.

In her petition for writ of certiorari, the petitioner alleges that the District Court has subject matter jurisdiction of this action based upon 42 U.S.C. §§ 1983, 1985, the Fourteenth Amendment, 28 U.S.C. §§ 1331 and 1343(3).

Neither § 1331 nor § 1343 grant the District Court subject matter jurisdiction over the Plaintiff's Complaint. Both of these sections refer to the "original jurisdiction" of the District Court. It is, of course, well settled that the District Courts have no appellate jurisdiction; therefore, the district courts are not empowered to review decisions by the state courts. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed.2d 362 (1923); *District of Columbia Court of Appeals, et al. v. Feldman,* 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983); *Carbonell, supra* (5th Cir. 1985).

In its original August 26, 1989 dismissal of this action, the District Court found that it had no authority to review the earlier determinations of the Mississippi state courts. Citing *Reed v. Terrell,* 759 F.2d 472 (5th Cir. 1985), and *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983), the District Court found that the relief sought by plaintiff

was "inextricably intertwined" with the state court decisions in the case.

On at least six occasions since 1984, the Fifth Circuit Court of Appeals has reiterated the clear principle that a federal district court has no original jurisdiction to entertain a plaintiff's collateral attack upon state court orders or decrees and has repeatedly admonished litigants by penalty of sanction for filing and pursuing such actions. *Hagerty v. Succession of Clement,* 749 F.2d 217, 220 (5th Cir. 1984); *Reed v. Terrell, supra; Carbonell v. Louisiana Department of Health & Human Resources,* 772 *supra; Krempp v. Dobbs,* 775 F.2d 1319, 1322 (5th Cir. 1985); *Hale v. Harney,* 786 F.2d 688 (5th Cir. 1986); *Corpus Christi Taxpayers v. City of Corpus Christi,* 858 F.2d 973, 976-977 (5th Cir. 1988).

In reaching its conclusion in *Chrissy F. By Medley v. MS. Department of Public Welfare, et al.,* 995 F.2d 595 (5th Cir. 1993), the Fifth Circuit relied heavily on the factually analogous case of *Reed v. Terrell,* 759 F.2d 472 (5th Cir. 1985). *Reed* stands for the proposition that a Federal District Court has no original jurisdiction to entertain a plaintiff's collateral attack upon a final state court judgment. An excellent summary of the applicable law in this regard is set forth in *Reed,* where parties in state court custody proceedings brought a § 1983 action in federal court against the state court judge and clerk and claimed that an order awarding fees in the state court proceeding deprived them of federal constitutional rights. The Fifth Circuit Court of Appeals stated:

> In dismissing the plaintiffs' actions, the district court did not err. It is well-settled principle that a plaintiff may not seek a reversal in federal court of a state court judgment simply by casting his complaint in the form of a civil rights action *Hagerty v. Succession of Clement,* 749 F.2d 217, 220 (5th Cir. 1984) (no jurisdiction to review state court judgment where appeal taken through state court system; *Sawyer v.*

> *Overton*, 595 F.2d 252 (5th Cir. 1979). Moreover, the Supreme Court has stated that a "United States District Court has no authority to review final judgments of a state court in judicial proceedings." *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482, 103 S.Ct. 1303, 1315, 75 L.Ed.2d 206 (1983). While a losing party in state court proceedings may be able in some instances to sue in federal court to "mount a general challenge to the constitutionality" of a state statute or rule, *Feldman*, 460 U.S. at 483, 103 S.Ct. at 1316, no such situation is presented in the instant case. As the federal district court in the instant case noted, the "essential relief" sought by the plaintiffs is reversal of the state court award of attorney's fees against them. District Court op., at 1. Indeed, this Court's review of the record in the instant case reveals that the plaintiffs' suit is "patently an attempt to collaterally attack the validity of the [state court judgment]." *Almon v. Sandlin*, 603 F.2d 503, 506 (5th Cir. 1979). See also *Kimball v. Florida Bar*, 632 F.2d 1283, 1284 & n.3 (5th Cir. 1980) (federal complaint, in essence, sought reversal of state court judgment although cast in form or general constitutional attack). A review of the plaintiffs' pleadings and arguments in the instant case reveals that this suit is "inextricably intertwined" with the state court's awards against the plaintiffs. *Feldman*, 460 U.S. at 483, n.16, 103 S.Ct. at 1315, n.16. Thus, the district court did not err in dismissing the instant suit for want of jurisdiction.

Reed, 759 F.2d at 473-474 (footnotes omitted).

Similarly, in *Hale v. Harney*, 786 F.2d 688 (5th Cir. 1986) the court reiterated:

> Judicial errors committed in state courts are for correction in the state court system, at the head of which stands the United States Supreme Court; such errors are no business of ours.
>
> . . . .

> We hold no warrant to review even final judgments of state courts, let alone those which may never take final effect because they remain subject to revision in the state appellate system. Constitutional questions as these are, to employ the Supreme Court's phrase in *Feldman,* "inextricably intertwined" with questions of the validity of the state court's decree, questions reviewable in the state system; and the district court correctly dismissed the complaint containing them as beyond its jurisdiction.

Hale, 786 F.2d at 691.

The rule against collateral attacks applies to federal actions "which candidly seek review of the state court decree" as well as to rulings of those courts which are closely related to such decree, and are thus "inextricably intertwined" with same. *Id., District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 482, 75 L.Ed.2d 206 (1983).

Respondents do not agree with the petitioner that there are conflicting decisions and applications of the *Rooker-Feldman Doctrine* by the Courts of Appeal. While there may be no bright line rule that determines when a federal claim is so "inextricably intertwined" with a state court judgment this does not mean that the Courts of Appeal have acted in a non-uniform fashion. The Courts of Appeal have consistently applied the same test to determine whether or not a federal claim is so "inextricably intertwined" with a state court judgment that the Federal District Court would lack subject matter jurisdiction. The test used to determine this is to whether the federal court is actually reviewing a state court decision. *Ritter v. Ross,* 992 F.2d 750 (7th Cir. 1993), is a good illustration of this point. It states:

> [t]here is, unfortunately, no bright line that separates a federal claim that is "inextricably intertwined" with a state court judgment from a claim that is not so intertwined. The crucial point is

> whether "the district court is in essence being called upon to review the state-court decision." *Feldman,* 460 U.S. at 483-484 n.16, 103 S.Ct. at 1316 n.16.

Id. at 754.

That there is no bright line rule does not mean that there is an inconsistency in the use or application of the Rooker-Feldman Doctrine. While the Seventh Circuit Court of Appeals admitted in *Ritter* that there was no bright line rule, it went on to apply the test that is always used in analyzing whether a federal claim is "inextricably intertwined" with a state court judgment so that the Federal District Court would lack subject matter jurisdiction. In *Ritter* the Court stated:

> [i]t is settled that "a plaintiff may not seek a reversal of a state court judgment simply by casting his complaint in the form of a civil rights action." *Hagerty v. Successions of Clement,* 749 F.2d 217, 220 (5th Cir. 1984), *cert. denied,* 474 U.S. 968, 106 S.Ct. 333, 88 L.Ed.2d 317 (1985); *accord Guess v. Board of Medical Examiners,* 967 F.2d 998, 1005 (4th Cir. 1992) ("Artificial attempt to redefine the relief sought are not sufficient to overcome the requirements of *Feldman.*"); *Owens-Corning Fiberglass Corp. v. Moran,* 959 F.2d 634, 635 (7th Cir. 1992) (section 1983 does not automatically permit federal court to review state judicial decision); *Worldwide Church of God v. McNair,* 805 F.2d 888, 893 (9th Cir. 1986) (*Feldman* applies in § 1983 context); *Lynk v. LaPorte Superior Court,* 789 F.2d 554, 563 (7th Cir. 1986) (federal courts rebuff efforts to retry state suite in federal courts under section 1983).
>
> We must distinguish whether the Ritters are asking a federal court to review the state court judgment through use of their section 1983 action or instead are mounting a general challenge to the Wis-

> consin statute which authorized the foreclosure of the tax lien.
>
> [emphasis added].

Id. at 754.

Not surprisingly, regarding the *Rooker-Feldman Doctrine,* the Fifth Circuit has held just as the Seventh Circuit Court of Appeals held in *Ritter.* In a case involving litigation over a disputed foreclosure judgment, where the landowners commenced a § 1983 action against the county and appropriate officials, the Fifth Circuit found that the landowners,

> like the plaintiff in *Rooker,* are essentially seeking a federal district court appellate review of a state judicial proceeding; their claim against Defendants are inextricably intertwined with the merits of that proceeding. As in *Rooker,* the lower federal courts have no jurisdiction over this complaint." *See Leaf v. Supreme Court of Wisconsin,* 979 F.2d 589, 598 (7th Cir. 1992); *See also Guess,* 967 F.2d at 1003-04 ("A plaintiff may not relitigate in federal court a particularized challenged to an adjudication against him in state court.").

Id. at 755.

Petitioner cites *Razatos v. Colorado Supreme Court,* 746 F.2d 1429, 1433 (10th Cir. 1984) in support of her proposition that the *Rooker-Feldman Doctrine* has been inconsistently applied. Again, the Respondents take issue with this assertion. In *Razatos* the Tenth Circuit Court of Appeals followed the dictates of *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983), to the tee. Citing *Feldman* and relying almost exclusively on that holding, the Tenth Circuit found that the District Court lacked jurisdiction over the Colorado Supreme Court's suspension of Razatos, but had jurisdiction over Razatos' constitutional challenge to Colorado's procedure for disciplining at-

torneys. Regarding the finding that the District Court had jurisdiction over the latter, the Tenth Circuit did not compromise this Court's pronouncement in *Feldman*:

> [w]e have recognized that state supreme courts may act in a nonjudicial capacity in promulgating rules regulating the bar . . . . Challenges to the constitutionality of state bar rules, therefore, do not necessarily require a United States District Court to review a final state-court judgment in a judicial proceeding. Instead, the District Court may simply be asked to assess the validity of a rule promulgated in a nonjudicial proceeding. If this is the case, the District Court is not reviewing a state-court judicial decision.

Id. at 485-486.

The exact same factual situation appeared in the United States Court of Appeals for the First Circuit in *Schneider v. Colegio de Abogados de Puerto Rico*, 917 F.2d 620, 629 (1st Cir. 1990), *cert. denied*, —— U.S. —— 112 S.Ct. 865 (1992). The United States Court of Appeals for the First Circuit wrote:

> [i]t is well-established that lower federal courts have no jurisdiction to hear appeals from state court decisions, even if the state judgment is challenged as unconstitutional. Review of state decisions may be obtained only in the United States Supreme Court. *See D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 476, 103 S.Ct. 1303, 1311, 75 L.Ed.2d 206 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416, 44 S.Ct. 149, 150, 68 L.Ed.2d 362 (1923). *See also* 28 U.S.C. § 1257. In *Feldman*, the Supreme Court considered the so-called *Rooker* doctrine specifically in the context of attorney challenges to rules and regulations governing the bar, in that instance relating to bar admission. The Court carefully distinguished between "general challenges to state bar rules, promulgated by state courts in nonjudicial proceedings"—for which there is jurisdiction in the

> lower federal courts—and "challenges to state-court decisions in particular cases arising out of judicial proceedings," 460 U.S. 486, 103 S.Ct. at 1317—for which there is not.

Id. at 628.

The *Schneider* court held that the plaintiffs challenged the general system of mandatory bar membership as prescribed by "the 1986 Rule," rather than the outcome of the specific case, allowing the district court subject matter jurisdiction pursuant to *Feldman.*

In *Centifanti v. Nix,* 865 F.2d 1422 (3rd Cir. 1988), the United States Court of Appeals for the Third Circuit held that the federal district court had subject matter jurisdiction where there was a "general challenge[] to [a] state bar rule[]." In so holding the Court specifically quoted the general rule in *Feldman*: that 28 U.S.C. § 1257 bars direct review in the lower federal courts of a decision reached by the highest state court because such authority is vested solely in the United States Supreme Court. *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 75 L.Ed.2d 206, 103 S.Ct. 1303 (1983); *Atlantic Coast Line R. Co. v. Locomotive Engineers,* 398 U.S 281, 296, 26 L.Ed.2d 234, 90 S.Ct. 1739 (1970); *Rooker v. Fidelity Trust Co.,* 263 U.S. 413, 415-416, 68 L.Ed.2d 362, 44 S.Ct. 149 (1923). The Third Circuit went on to quote the important qualification found in *Feldman,* also employed in *Schneider,* which affords jurisdiction to the United States district courts over general challenges to state bar rules. *Feldman* at 486.

Likewise, in *Czura v. Supreme Court of South Carolina,* 813 F.2d 644 (4th Cir. 1987), the United States Court of Appeals for the Fourth Circuit found that despite the plaintiffs contention that he was attacking the constitutionality of a disbarment rule, the action was properly dismissed by the federal district court under *Feldman* because he did not even refer to such a rule in his

complaint. In reaching their decision in *Czura*, the Fourth Circuit utilized the *Feldman* analysis consistently applied in the other circuits. *Id.* at 646.

The Ninth Circuit explored this issue in *Worldwide Church of God v. McNair*, 805 F.2d 888 (9th Cir. 1986). Here the plaintiff brought a § 1983 action against state officials contending that a state court jury verdict against them for defamation, infliction of emotional distress, and conspiracy was unconstitutional. The plaintiff requested that the district court declare the state trial court verdict unconstitutional and to enjoin state court enforcement of the judgment. The District Court dismissed the case and its dismissal was affirmed by the Ninth Circuit Court of Appeals who held that the district court lacked subject matter jurisdiction over this case. In reaching this conclusion, the Ninth Circuit went through the now familiar analysis, consistently used throughout the country. In *Worldwide Church of God v. McNair* the Ninth Circuit stated:

> The United States District Court, as a court of original jurisdiction, has no authority to review the final determinations of a state court in judicial proceedings. 28 U.S.C. § 1257 provides that the proper court in which to obtain such review is the United States Supreme Court. *Id.* at 890.

The Court, citing *Feldman*, went on to say:

> This doctrine applies even when the challenge to the state court decision involves federal constitutional issues. *Id.* at 891.

Finally the Ninth Circuit said:

> Although the federal district court may not exercise appellate jurisdiction over the judgment of a state court, a district court does have jurisdiction over a "general" constitutional challenge that does not require review of a final state court decision in a particular case. *Id.* at 891.

Counsel opposite footnotes *Worldwide Church of God v. McNair* at the end of a sentence which states: "as numerous courts and scholars have acknowledged, the precise meaning of 'inextricably intertwined' remains unclear, and this has resulted in conflict and inconsistencies." This case merely states that drawing a distinction between 1) general constitutional challenges that do not require review of a final state court decision in a particular case and 2) challenges to a particular judgment of a state court over which a federal district court may not exercise appellate jurisdiction, is a difficult task. *Id.* at 891. The fact that the analysis required is difficult, subtle, complex or time consuming does not make its application inconsistent—it just means sometimes it's hard.

CONCLUSION

Because the Fifth Circuit Court of Appeals properly dismissed the defendants claim due to lack of subject matter jurisdiction, consistent with well established precedent, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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